IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 322 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VERAVAL PEOPLES CO.OP.BANK LTD

Versus

BHANABHAI RAMBHAI KHER

Appearance:

MR RC KAKKAD for Petitioners

NOTICE SERVED BY DS for Respondent No. 1, 3

MS SEJAL K MANDAVIA for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/02/2001

ORAL JUDGEMENT

1. By virtue of this Revision Application original plaintiffs in Regular Civil Suit No. 87/98 before learned Civil Judge (Junior Division) at Mangrol assail &

challenge the judgement and order passed in Civil Miscellaneous Appeal No. 131/1998 decided by Second Extra Assistant Judge, Junagadh. The said appeal arose out of an order passed by the Trial Court below Exh. 5 an application for interim injunction whereby the injunction sought by the plaintiffs/revisioners came to be rejected in part.

2. In order to appreciate the contentions raised before this Court some facts need to be stated;

2.1. According to the plaintiffs they had purchased plots from respondent no. 1 who was the original owner of Survey No. 75/88 situate at Mangrol. They had purchased plot nos. 3,4,5,6,10,11 and 12. The undisputed facts are that said survey No.75/88 was divided into sub plots and certain internal plots were provided for the plots which were purchased by the plaintiffs as stated above. According to the plaintiffs now respondents have started a construction over such road falling between plot no. 1 and 2. The road is of width of 15 feet. The construction which is proposed to be made, if permitted, would deprive the plaintiffs of their right to use the road falling between the plot no.1 and 2. It is contended that the plaintiffs right is therefore infringed and if this construction is permitted to be made in future it may create further complications and litigations.

2.2. On the other hand the defendants have come with a case that the plaintiffs as purchasers of the plot have not become the owner of the land on which the roads are provided. Their right over the roads is limited to user of the road and payment of taxes. It is further contended that the construction that is proposed to be made is at height of 12 feet from the ground level and therefore it is not going to obstruct the road of the plaintiffs in any manner.

3. Both the Courts, below after perusing the documents and evaluating the contentions raised by the parties, in light of the documents, came to the conclusion that the plaintiffs have no prima-facie case. The Courts also considered the fact that the defendants have given an undertaking that in event the defendant loses at the end of the trial they would demolish/remove the constructions that is proposed to be made.

4. With the above observations the Trial Court dismissed the application for temporary injunction. The appellate Court also dismissed the appeal on merits

Aggrieved by this order the original plaintiffs have preferred this Revision Application.

5. Mr. R.C. Kakkad, learned Advocate appearing for the revisioner has taken this Court through the orders impugned. He has also taken this Court through the documents by virtue of which the plaintiffs got the title. He submitted that the Courts below have not appreciated that if injunction is not given it would complicate the case further and would lead to multiple litigations. He submitted that both the Courts below were impressed by the fact that the defendants have given an undertaking that in the event the defendants lose, they would remove the construction without claiming any equity. According to Mr.R.C.Kakkad, this is only reason that has weighed with the Trial Court which is not proper and therefore this Revision Application may be entertained.

6. Ms. S.K. Mandavia, learned Advocate appearing for the respondents have opposed this Revision Application. She submitted that undertaking by the defendants respondents is not the sole ground for rejecting the relief sought by the plaintiffs. The Courts below have only taken it as an additional factor to support its decision. She submitted that the plaintiffs have no prima-facie case as has been held by the Courts below. These are factual findings which may not be interfered with by this Court in exercise of revisional jurisdiction. She submitted that this Revision Application may therefore be dismissed.

7. Having regard to the contentions raised before this Court and on having gone through the orders passed by the Courts below , so also the document on basis of which the plaintiffs claim their right, it appears that no error either of law or of fact can be said to have been committed by the Courts below. No jurisdictional error is found or indicated to have been committed by the Courts below and considering the scope of the Revision Application under Section 115 of the Civil Procedure Code this Revision Application cannot be entertained.

8. If the document is perused, it appears that the road through which the plaintiffs claim their right of way is not of the full and exclusive ownership of the plaintiff. Prima-facie their right is restricted to user and payment of taxes. With this prima-facie indicators the Courts below have rightly observed that the plaintiff has no prima-facie case.

9. An apprehension was shown by Mr. R.C. Kakkad, that in event of some unforeseen eventuality the construction may cause obstruction. However, it requires to be noted that the local authority namely the muncipality has granted permission for the construction. Prima-facie therefore it can be presumed that the authority must have taken into consideration relevant provisions before granting such permission which would take care of such eventualities.

10. Mr. Kakkad, has relied upon a case of SWET RAJHANSH CO-OPERATIVE HOUSING SOCIETY LTD Vs. SURAT MUNICIPAL CORPORATION, 1994 (2) G.L.H. 1553. He submitted that as observed in the judgement interim injunction cannot be granted to a party, only an undertaking given to the Court that the building would be pulled down if ultimately the party fails in the litigation. It is to be noted that, here in the instant case before this Court the defendants have not sought any injunction. Further, reliance placed by the Court below on the undertaking is in addition to the finding of the Courts below that the plaintiff has no prima-facie case Above all, it requires to be noted that the facts in the above case were totally different from that of the present case. In that case the construction which was undertaken was found to be contrary to law. The Court observed that by accepting an undertaking, a person cannot be allowed to construct or maintain something, which is illegal, and contrary to law, merely by contending that the same will be demolished if the suit is dismissed. In the instant case no injunction is sought by the party making construction. The construction is started after obtaining appropriate permission from the Competent Authority and the plaintiff is found to be not having prima-facie case. The Courts below therefore were justified in not granting injunction in favour of the plaintiff.

10.1. Mr. Kakkad, relied upon the case of GRAM PANCHAYAT, UMBER GAON & Ors. 1984 G.L.H. 601. The Court observed that an unconditional undertaking respondents to pull down construction at their own cost and risk in case of failure in appeal cannot be a good ground for granting interim relief pending the appeal. This decision also cannot help the revisioner because in that case the appeal was against a judgement and decree which was passed after considering the merits of the case. The Trial Court after considering the events came to the conclusion interalia that the plaintiff, Gram Panchayat had failed to prove its ownership over the property. In light of those facts the observations were

made. In the facts and circumstances of the case possession is totally different as discussed above.

10.2. Lastly Mr. Kakkad relied upon IBRAHIM SHAH MOHAMAD AND Ors. Vs. NOOR AHMED NOOR MOHAMED AND Ors. 1983 (2) G.L.R.961. In that case it was observed that if the property which is subject matter of litigation, changes hands pending the litigation other persons would become necessary parties. In such situation the Court should lean towards seeing that there is no multiplicity of the proceedings. In such case ad-interim-injunction can be granted. In the facts and circumstances of the case, present it is not the case of the plaintiffs that the property is likely to change hands and the defendants are likely to transfer the property. Even injunction against transfer is not sought and therefore this decision would not help the revisioner.

11. In view of the above discussion the revision application must fail and the same is dismissed. Notice discharged. Interim relief stands vacated. No costs.

(A.L. DAVE,J.)

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